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(subject to editorial corrections)**

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CORONER'S ACT (NORTHERN IRELAND) 1959

VERDICT ON INQUEST

On an Inquest taken for our Sovereign Lady the Queen at Laganside Court Complex in the County Court Division of Belfast before me, Sir Reginald Weir, a Coroner of the Coroners' Service for Northern Ireland, touching the death of Roseann Mallon to enquire how, when and where the said Roseann Mallon came to her death, the following matters were found:

- [1] Name and surname: Roseann Mallon.
- [2] Sex: Female.
- [3] Date of Death: 8 May 1994.
- [4] Place of death: 84 Cullenrammer Road, Dungannon, County Tyrone.
- [5] Usual address: 60 Cullenrammer Road, Dungannon, County Tyrone.
- [6] Marital status: Single.
- [7] Date and place of birth: 15 November 1918. Dungannon.
- [8] Occupation: Retired carer.
- [9] Maiden Surname (of woman who had married): N/A.
- [10] Cause of death: 1a Bullet wounds of trunk.

Findings

Introduction

[1] In this inquest the circumstances immediately surrounding the death of Ms Mallon ("the deceased") were not a matter of controversy and may therefore be shortly described. The deceased was a retired unmarried lady aged 76 years at the date of her death. Her home was at 60 Cullenrammer Road, Dungannon. On the evening in question she and her sister-in-law, Mrs Brigid Mallon, had been out together and returned by car to Mrs Mallon's home at 84 Cullenrammer Road where

she lived with her son Christopher. It was around 22.30 when they arrived and so it was by then dark. The deceased intended to stay overnight with her sister-in-law with whom she spent much of her time. The deceased sat on a settee in the lighted living room at the rear of the house with her back to the window on which the blinds were drawn although perhaps not fully. Mrs Mallon left the room to telephone a daughter, Paula, who lived with her husband and family at 81A Cullenrammer Road which is on the other side of the road with a view over to No. 84.

[2] As the two ladies spoke the daughter noticed a large saloon car, dark in colour, stopping around the entrance to No. 84 and two men running up its driveway towards the house. She told her mother to see what was happening and to get to a safe place. Her mother ceased speaking but left the phone line connected while she went into the living room and whispered to the deceased and signalled with her hands that she should leave the room. The deceased began to rise but her movements were slowed by an arthritic condition. Mrs Mallon had by then gone back into the hall when she heard a rattle of gunfire and the room filled with smoke. She heard the deceased say "oh dear". After she had heard a car drive off with spinning wheels in the direction of Greystone, she returned to the living room where she noticed that the blind was by then up and so she pulled it down and went to the deceased who gave a couple of sighs and Mrs Mallon watched the colour drain from her face. Mrs Mallon summoned her daughter who had heard the shots on the still-open phone line and she made two 999 calls to the police just before midnight. An ambulance arrived at around 00:13 but the crew could find no signs of life. However they remained with the deceased until her doctor arrived and pronounced life extinct at 00:40 hours.

[3] An inspector and sergeant of police arrived from Dungannon, which lies about 4 or 5 miles from the scene, at 00:15 when the scene was secured and a scene log established. A scenes of crime officer ("SOCO") attended at 02:35 and carried out a forensic examination in the course of which he collected a number of exhibits including nine empty bullet cases found on the tarmac to the rear of the house. He handed the exhibits to a police officer from Dungannon at 12.15 and these were delivered to the Northern Ireland Forensic Science Laboratory that same day.

[4] At 07.30 on 9 May a couple left their house near Greystone but when they reached the bottom of their lane they saw there a burnt-out car which was obstructing the way. The finding was reported to the police who attended and obtained the chassis number of the vehicle which was a green Datsun Stanza. A SOCO took samples from the interior of the vehicle and recovered sections of its tyres.

[5] Police enquiries revealed that the car had been sold on behalf of the registered owner on 5 May, three days before the shooting. An advertisement had been placed in a newspaper and a man came, paid £220 and drove away in the car. The seller thought that he might have been able to recognise the person who bought the car if he saw him again and when asked if he would attend an identity parade he said he

would do so provided the person involved could not see him. However police had never returned to him in relation to that possibility.

[6] Martin Mallon, a son of Mrs Mallon and nephew of the deceased, and Mrs Mallon's daughter Paula later both gave statements to the police indicating that they had each separately seen a green hatchback car on Cullenrammer Road on the early evening of 8 May 1994, some hours before the killing. Martin Mallon said that the car slowed whilst passing his mother's house at No. 84 at around 18.00. He gave a description of the sole occupant. Paula indicated that she had seen a smallish green hatchback car drive slowly along the road at about 17.30. The occupants seemed to pay particular attention to her house as had the two male occupants of a dark coloured Sierra car that passed around 30 seconds later.

[7] At 20:36 on 9 May a telephone call was made to the UTV newsroom. The male caller said "The Mid-Ulster Brigade of the UVF claims responsibility for the gun attack last night". He then said "Miss Mallon". A silver Peugeot 309 car had been sighted in the area by at least one and perhaps three people. As a result the investigators followed up all silver Peugeot 309 cars with the partial registration letters "IB". Only two of these cars could not be eliminated from the enquiry including one owned by a Billy Wright, a notorious sectarian terrorist whose vehicle had the registration "TIB 2365" and the second a car whose owner had moved from his registered address and could not be traced.

[8] In the days following the murder searches were carried out in the areas of the shooting and the location of the burnt-out car. On 14 May 1994 a policeman was searching on Mullycar Road, Greystone around a derelict house when he found a weapon under a sheet of corrugated iron. The weapon was retrieved and examined by the forensic scientist, Mr James Wallace, who determined that the cartridge cases found at the scene had been fired from that weapon which was, therefore, the weapon used in the shooting of the deceased. It was a Czechoslovakian VZ 58 rifle. Mr Wallace gave evidence that weapons of this type were quite common and that a number of them had been received into the forensic science laboratory. He said they were rifles commonly used by "Loyalist" paramilitaries in the early 1990s, being part of a consignment received into Northern Ireland.

[9] Mr Wallace also examined a roller blind removed from the window in the room where the deceased was shot. He noted that four areas of bullet damage were present in the lower part of the blind, indicating that the blind had been pulled down whenever the shots were fired, although he could not be certain how far down the blind had been pulled at the time. At least two of the holes appeared to be associated with a close range firing.

[10] At 00:35 on 9 May 1994 the Peugeot car TIB2365 belonging to Billy Wright was stopped by police at the junction at Sandymount Road and Armagh/Portadown Road. Wright was a passenger in the car along with two others denominated S4 and S6. All three were arrested and taken to Gough Barracks, Armagh. They were

forensically examined by a SOCO and held until being released without charge on 13 May 1994. Forensic tests of their clothing produced negative results and it must be presumed that their interviews also did so but the court has been told that the notes of the interviews are no longer available having subsequently been destroyed. This matter will be returned to hereafter.

[11] From the foregoing summary of the circumstances immediately surrounding the death of the deceased a number of matters are clear. Firstly, this was a planned, unprovoked sectarian attack for which there was no excuse or justification whatsoever. The deceased was an entirely innocent victim, a defenceless lady of mature years and blameless character who was shot either because the gunman fired at random through the blind into the lighted living room of what they knew to be a Catholic home or, it may be, because the blind was not fully down and the gunman was able to see that his target was an elderly woman seated with her back towards him and nonetheless proceeded to shoot her. Whichever was the case the shooting was cowardly and entirely unjustified and unjustifiable by the claim of responsibility made on behalf of a gang of so-called "Loyalists". The deceased was shot for no other or better reason than she happened to be a person present in a Catholic home.

The injuries sustained by the deceased

[12] These are detailed in full in the Autopsy Report of Dr John Press, consultant pathologist, on his examination of 9 May 1994 and I therefore confine myself to recording the Opinion which he reached based upon his clinical findings:

"Death was due to bullet wounds of the trunk. Numerous bullet fragments, including the steel cores of bullets, had struck the back of the body and passed forwards. Some had made their exits on the front whilst others had lodged in the body. They had fractured two right and two left ribs as well as severely lacerating the lower part of the right lung and lacerating the intestines and the aorta in the abdomen. The combined effect of these injuries would have caused her rapid death.

Other fragments had also struck the head and limbs. However, these injuries were less severe and are unlikely to have accelerated death.

The injuries were of a type caused by bullets of high velocity.

The atypical nature of the entrance wounds together with the presence of bullet fragments indicate that

they had struck some object and had fragmented before striking this woman.

All appeared to have come from behind her but there was nothing to indicate the range at which they had been fired.

She had suffered from a raised blood pressure but this condition played no part in the death."

Other matters of concern

[13] While as I have said the circumstances immediately surrounding the death of the deceased were not a matter of controversy at the inquest there were other events and matters that occurred or came to light around the date of the death or during the investigation into it that have given rise to concern and much of the hearing time at the inquest was accordingly devoted to them. I shall deal with them sequentially and in each case answer so far as is possible, the questions which it has been agreed between all the interested parties I should pose to myself.

Activity at an Old Mill on the evening of 7 May 1994

[14] On the evening prior to that on which the deceased was killed two local boys aged 14 and 10 went to an area off the Cullenrammer Road known as the "Old Mill". It consisted of farm outbuildings and was no doubt an attractive place for boys to look around and play. These boys both made statements to the police, the older boy one and the younger eventually three in number. The younger boy and his mother both gave evidence to the inquest but the older boy has since moved away and could not be contacted. His statement made at the time was however admitted.

[15] There were some differences in what the boys said about what they claimed to have seen but the younger boy said in his evidence to the inquest that he opened the door and looked into a shed at the Old Mill in which he saw 3 or 4 army-type packs and maybe 5 or 6 guns leaning against a wall. At that point he heard a man say "close the door" and he did so. He saw the man coming from a field dressed in a black peaked cap and camouflage clothing and carrying a rifle with a big camouflaged sight. The man spoke, telling the boys to go home in what he had initially said in his statement was an English accent but described in his oral evidence as a loud commanding voice and said he did not recall its accent. He believed that the man had asked their names. He did not know that the older boy had said in his statement that he had heard two other voices coming from a hedge. The boys had reported to one of their brothers what they said they had seen and in turn to Christopher Mallon.

[16] Evidence was given about the circumstances in which the younger boy came to make his further police statements and about whether the police had put pressure

on him to say that he had not really seen guns in the shed. I do not find it necessary to reach a view about that collateral issue because of the evidence of a man who had contacted the police on 9 May 1994, the day after the death, as a result of hearing a broadcast concerning suspicious activity at the Old Mill. He informed police that he had been the person who had spoken to the boys at that location and that the property belonged to his uncle and he had gone there to shoot. He said that the shed was kept padlocked and he had therefore earlier obtained the key from his uncle, had unlocked it and left it unlocked after leaving his daysack inside. He had then walked down a field to a nearby river where he remained for perhaps 10 minutes. While at the river he heard the boys at the shed and went up to speak to them. He was carrying his rifle.

[17] I am entirely satisfied that the account of the man who came forward promptly to volunteer an account of his activities at the Old Mill is the correct one. I do not accept that there were guns in the shed nor day sacks other than the one which the man had placed there. I am satisfied that the only person there other than the boys was that civilian hunter. It is in my view inconceivable that Army personnel would have left firearms unattended in a shed and gone away leaving them. For what conceivable purpose would they do so? How did they gain entrance to the locked shed without having a key to the padlock? By what other means could the weapons have been placed propped up within the shed? Would they have been left there if the soldiers had seen the hunter's day sack in position there? I accordingly answer the questions posed on this topic as follows:

- (a) The nature of the activity: A member of the public had gone hunting on family lands adjacent to the Old Mill when he met the two boys. He was armed with a hunting rifle.
- (b) The explanation for the activity: The hunter had unlocked the shed at the Old Mill to leave his day sack inside and gone out without locking it again to walk to a nearby river. After some minutes he heard the boys near the Old Mill and walked up to them. Seeing that the door to the shed had been opened he told the boys to close it again. There were no firearms or other day sacks in the shed while the boys were there.
- (c) There was no factual nexus between this activity and the means whereby the deceased came by her death.

The discovery of concealed surveillance equipment overlooking 84 Cullenrammer Road

[18] On 9 July 1994, some two months after the death of the deceased, an elaborately-concealed surveillance camera was discovered in a field overlooking No. 84. It is clear from the evidence that the camera was part of a surveillance operation that had been initiated by RUC Special Branch ("SB"). The target of that

camera was the engineering works at No. 84 operated by Christopher and Martin Mallon. Its purpose was to identify persons and vehicles at the engineering works.

[19] Understandably, the discovery of this equipment a couple of months after the shooting was a matter of considerable distress and concern to the deceased's next of kin and indeed the public more generally. It appeared to be directed towards the murder scene and, if in place at the time of the murder, could have captured all or part of the event.

[20] As a result of the disclosure process in advance of the inquest hearing it became apparent that the camera discovered was part of an operation codenamed "Paucity 2". This immediately raised a question over the possible existence of a "Paucity 1" and in fact it proved that there had been a related operation called "Paucity 1" in which another camera existed and its target was the home of Martin Mallon at No. 68 Cullenrammer Road. That operation commenced before Paucity 2 on 3 March 1994 and ceased on 9 July, the same date as the Paucity 2 camera had been discovered. The Paucity 2 camera had been put in place initially on 8 April 1994. It was extracted on 20 April 1994 and reinserted on 24 April where it remained until it was again extracted on 21 May and reinserted on 15 June where it remained until its discovery. It was therefore in place on the date of the shooting.

[21] The military evidence was that the Paucity 2 camera was trained on the engineering works and the images produced by it were relayed to soldiers in a military observation post ("MOP") hidden in woodland some distance away who were able to pan the camera remotely and record the images from it. They were in radio contact with a base at Killymeal. The soldiers at the MOP could monitor the pictures and also act as a Quick Reaction Force if there were a risk of compromise of the camera. The soldiers monitoring the images recorded on tape everything during daylight hours in order to establish a "pattern of life" at the target location. The camera was turned off at night in order to save battery power. In addition, a ground log was kept and observations communicated by radio to the Operations Room at which there was kept an operations log. The tapes were sent back periodically and were there edited. The editing consisted of viewing the tapes to create a tape solely of activity. For example, three tapes each of 30 minutes duration might only have a total of 30 minutes activity on them and during the editing process the soldier involved would type what he was seeing in order to provide some context for the viewer. These logs were sent to Special Branch and the original tapes prior to editing were then wiped and reused.

[22] The evidence was that during the course of the operation a "resupply" or "live letterbox" operation would be conducted to extract filled tapes and logs and resupply the MOP. This was usually done at night and took place every three to four days in winter and up to every two weeks in summer. The activity at the MOP was described as follows:

- (a) When images were being received they were monitored at all times.

- (b) There were six members of the team.
- (c) One person was looking directly at the monitor.
- (d) Another was writing down what that person was saying they could see and operating the tape recorders.
- (e) They were looking at movement at the premises and trying to work out patterns of life.
- (f) They used conventional VHS video tapes and 18 were used between 26 April and 8 May 1994.
- (g) If they were unable to monitor the usual practice was to pack the log and equipment at the MOP away.

[23] On 8 May 1994 at 23:50 the soldiers at the MOP heard a burst of automatic fire in the area. They reported it to the Ops Room and were told not to react. The operations log contains the following entry made at 23:50:

“Heard a burst of machine gun fire 500m south of their loc”

At 23:54 the log records a situation report which reads:

“Sit Rep. - There was a burst of auto-fire from the south of their location approx. 500m. No casualties. It was not aimed at their location. TCG have been informed.”

[24] The soldier who was in charge of the MOP on the night in question said that the reaction time from there to the Paucity 2 camera was some 20 to 25 minutes.

[25] The soldier who was in the charge of the Operations Room at Killymeal on the same evening confirmed that at 23:50 the “covert operation” reported that they had heard a burst of machine gun fire coming from the Cullenrammer Road area. He contacted police who told him that they believed the shooting was at 84 Cullenrammer Road. The soldier told the covert operation to remain where they were and that other troops would go to the area.

The Anderson Investigation

[26] Chief Superintendent Anderson was instructed to investigate the “loss of the equipment and related matters” and the investigation began on 28 July 1994. The recovered Paucity 2 equipment had been in the possession or control of Christopher

Mallon since its discovery but it was not until 27 October that it was handed over to Mr Anderson by Christopher Mallon.

[27] The main conclusions of the Anderson investigation were expressed as follows:

- (a) The equipment found was not capable of poor visibility operation or night work.
- (b) The cameras, if capable of night work, would only have shown pictures of the front of 84 Cullenrammer Road and not the rear of the house where the killing was perpetrated.
- (c) The camera was "of no value to the murder inquiry".
- (d) The tapes of the surveillance operation were edited and re-coupled to keep information of use to the operations. Superfluous tapes were recycled.
- (e) A number of log books which the team would like to have acquired were not available.
- (f) All information gained i.e. vehicles taped in the area of the murder scene for the period before/after the murder has been made available to the murder inquiry.

[28] Neither Mr Anderson nor his deputy, was available to give evidence to the inquest. However another member of the Anderson team did give evidence and confirmed that:

- (a) The Anderson team was tasked to:
 - (i) recover the "stolen" equipment, and
 - (ii) seize tapes and interview soldiers.
- (b) The only time that the Anderson team was to liaise with the murder investigation team was if they found evidence to assist them. He believed that the only time they passed information was probably about the vehicles they found on the tapes.
- (c) The video tapes were not viewed by the murder investigation team but only by the Anderson team.
- (d) The list of vehicles was compiled by two detectives from the team watching the edited tapes which were the only tapes they received.

- (e) The product of their work was handed over to the murder investigation team on 15 September 1994. He agreed that had he been investigating the murder he would probably have liked to have had the registration numbers earlier.

Information from the surveillance operation

[29] The product of the surveillance operation was video footage, some of which was available to the inquest in edited form on DVDs. In addition there are notes contained in ground logs completed by the MOP and operation logs completed in the Operations Room.

[30] For the afternoon of 8 May 1994 the Paucity 2 ground log records as follows:

“16:22 picture unworkable due weather.

19:56 picture now workable.

21:28 picture unworkable due to light/closing down.”

[30] The operations log for Paucity 2 similarly records that at 16:25 the picture was unworkable due to weather and at 21:28 closing down due to poor light. As earlier noted, the operations log later records:

“23:50 heard burst of machine gun fire 500m south of their location.

23:54 Sit Rep there was a burst of auto-fire from the south of their location approx. 500m. No casualties. It was not aimed at this location TCG have been informed.”

[31] The Paucity 1 logs record that the battery ran out at 07:49 on that day and there are no more notes on observations for that day or the next for that reason. There is just over five minutes in total of footage available from the Paucity 2 camera for 7 and 8 May 1994.

The technical capability of the Paucity 2 equipment

[32] After the equipment had been found on 9 July the Mallon family showed it to a man who had previously worked for BBC and UTV who told the family that the equipment had night sight and also the ability to zoom in and out. However a soldier gave evidence that he had installed the surveillance equipment for Paucity 2 and explained that the system comprised two cameras, one large and the other small. He said that the smaller camera had no panning capability and did not

overlook the target but was viewing the large camera site for the latter's security. The equipment allowed for monitoring of both cameras but not simultaneously. He also said that the initial footage captured on 8 April 1994 and provided to the inquest shows the extent of the camera's capabilities. He confirmed that the camera could not view the front of the bungalow at No. 84. Even if the murder had occurred in daytime he said that the camera would not have captured those who ran up the left hand side of the house and round the back. He said that the slightest rain or overcast conditions reduced the picture, sunlight could produce a heat haze and that ideal camera conditions were a bright cold day. Another soldier gave evidence that the camera was daylight/daytime only and was turned off at night to save battery power. A further soldier confirmed that evidence and said that the camera needed to be able to pan and tilt and that a camera working on thermal imaging would not be able to do that. Furthermore, a thermal imaging camera works on heat and requires ambient light. No ambient light such as streetlights was present in this rural area.

[33] After the equipment had been handed to police it was examined by FSNI. The scientist made a video of footage taken from the camera while a light test was conducted. He indicated that he had received a document from the Ministry of Defence which said that the camera would not function below 72 lux which is the light level just before street lighting comes on at dusk. His test confirmed that below 72 lux the camera image was bad. He also pointed out that his test was carried out without the "bird's nest" that had concealed the camera in its hidden location. He was not able to move the lens of the camera as that was done by a remote control device that he did not have but he did confirm that the equipment could not zoom in on a subject.

[34] From this summary of the evidence it seems clear that, whatever the family had been told by the civilian "expert" on video cameras and therefore believed to be true, in fact the camera did not have the capacity to pick up or transmit images at night nor did it have the capacity to zoom in and out.

[35] It would not have recorded the actions of the attackers who ran up the left hand side of the house around to the rear before opening fire.

[36] It was not possible to reach the point at which the capacity of the equipment used became clear until the evidence had been heard at the inquest. The discovery of the concealed camera naturally gave rise to a suspicion of collusion by security forces with those responsible for the killing. However, counsel for the next of kin realistically accepted in their written closing submissions that there was no evidence from the material provided that those involved in the covert surveillance operation either played any part in the attack which led to the killing of the deceased or could have prevented that attack. Furthermore, given the direction in which the car drove off after the killing and its relation to the MOP there was little that those at the MOP could have done to apprehend the killers even had they moved from their location against the order to remain where they were.

[37] My conclusions on the agreed questions posed on the surveillance issue are:

- (a) What was the purpose of the operation? To carry out surveillance on the engineering works of Christopher and Martin Mallon at 84 Cullenrammer Road for the purpose of gathering information as to what vehicles and persons came to the works and, so far as could be discerned from viewing the outside of the building, what activities were carried on there.
- (b) What was the product of the operation? Video recordings taken through the concealed camera and logs of observations made by soldiers as to what activities could be seen on the images from the camera.
- (c) What did those involved in the operation see or hear at the time of the death (or did not see or hear as the case may be) and the manner in which they reacted? Soldiers concerned in the operation were in a place of concealment some 500 yards from No. 84 when at 23:50 they heard from that direction a burst of automatic fire. The fire was not aimed at their location. They reported by radio what they had heard and were instructed not to react and that other troops would go to the area. The concealed soldiers did not see anything of the events at or near No. 84 as there was no physical line of sight and nor did the concealed camera record anything at the time because it had been turned off at 21:28 due to poor lighting conditions. Bearing in mind their distance from the firing and their lack of any vehicle the concealed soldiers could not have apprehended the killers as they made their escape from the scene even had they disobeyed their order to remain in their position of concealment at the MOP.
- (d) What was the capacity of the technology used in the operation? The camera was unable to capture or transmit images during darkness and had been switched off for that reason more than two hours before the shooting occurred. Had it been daylight at the time it could not from its position have captured images of the terrorists running up the side of the dwelling at No. 84 or at its rear where the shots were fired. It might however have recorded vehicles at or nearby the entrance to No. 84.
- (e) Was there any factual nexus between the surveillance operation and the means whereby the deceased came to her death? There was no evidence of any such nexus.

The nature and quality of the police investigation into the death

[38] As matters developed at the hearing, this area became that about which most concern was expressed on behalf of the next of kin. The details of those concerns may be dealt with under separate headings.

The involvement of Special Branch

[39] Detective Chief Inspector McFarland was the police officer in charge of the investigation into this killing and his deputy was Inspector Cowan. Mr McFarland, now long since retired, gave evidence that as part of the investigative process and in accordance with normal practice a request was sent to SB as to whether it had any information to help identify the culprits. A reply came from SB on 16 June 1994 that "there is no intelligence to hand at present which would assist your enquiry. However, enquiries continuing". Nothing was said about the possible existence of pictures of cars and their registration numbers although SB had been receiving the edited tapes while the camera remained in position until discovered on 9 July. Further, there is no evidence that the tapes for the period around the date of the killing were examined at that stage by SB itself to see what information might be gleaned about vehicles in the vicinity. Indeed, Mr McFarland made it clear that he only became aware of the existence of the camera and the surveillance operation involving it when a solicitor acting for Mr Martin Mallon told him on 19 July 1994 about the camera having been found, that he knew of someone who had possession of it and that he would try to obtain it.

[40] This was, to say the least, most unsatisfactory. Clearly a decision was taken at a senior level in SB not to share the video material or its existence with Mr McFarland who was a policeman of senior rank charged with the investigation of the most serious crime of murder. Even after the surveillance had ended as the result of the discovery of the camera and its presence therefore no longer required to be kept confidential nothing was said about it to the investigation team until Mr McFarland was spoken to by the solicitor.

[41] In his evidence at the inquest Mr McFarland was candid about the then relationship between SB and the police generally. He described SB as "a force within a force" and added "if SB thought you didn't need to know you didn't know". He said that it is part of any investigation to know who had been driving up and down the road in the vicinity of the crime scene. He had been "frustrated" when he found out that there was a camera. He would have thought that "the best course would have been to let us see the tapes".

[42] In fact the investigation team was never supplied with the tapes but solely a list of car numbers said by SB to have been compiled from the tapes. Why the tapes were not simply handed over to the crime investigators, even when the existence of the surveillance operation had become a matter of public notoriety, it is difficult to understand and has not been explained. Importantly however in the context of this

inquest, Mr McFarland said in reply to questions from Mr Barry Macdonald, senior counsel for the next of kin, that no evidence came to light to show that the investigation was undermined and when pressed with the suggestion that it had been "critically undermined" replied "I don't know the answer to that".

[43] The SB account of its part in the viewing of the tapes and supplying of information was of necessity hampered because of the unavailability of the respective regional chief officers at Chief Superintendent level in the CID and SB, both having died since these events occurred. It appears that there was a policy of exchanging some information at that high level between CID and SB. However, both men made statements in 1994 which agreed that the CID officer had been told on 9 May 1994 the day after the killing, by the SB officer that there was a surveillance camera in place but that it had not disclosed anything of evidential value and that there was to be no "downward dissemination" as it was an extremely sensitive issue. This approach seems to have been adopted as Mr McFarland said he had not been told by his superior, Detective Chief Superintendent McBurney, about the camera and when he himself informed Mr McBurney on 19 July 1994 that the solicitor had told him of the finding of the camera Mr McBurney gave him "no indication that he had known about the camera any more than I did".

[44] The evidence disclosed some confusion as to when exactly the tapes were viewed by a SB inspector on the direction of the superior to whom he had reported that there was nothing of evidential value. Indeed there was uncertainty as to how the tapes were obtained - by whom and through whom and when and the conflicting evidence suggests that the head of CID had been told that there was nothing of evidential value to be seen at least one and perhaps several days before the SB inspector could have completed his viewing of the tapes and reported the absence of useful information to his superior. This inconsistency cannot be explained. It seems that either Mr McBurney was not told that the tapes contained nothing of evidential value as early as 9 May or that, if indeed he was told this by the head of SB on that date, the tapes had by then not even been viewed.

[45] As has been said, the investigation team never saw any of the tapes. What it was provided with, on 15 September 1994 some five months after the killing, was a list of vehicles whose details were said to have been abstracted from the tapes and the logs maintained of the active content from the filming. However some of the log books had allegedly been destroyed, seemingly because of varying practices of different regiments as to the period of retention. It does seem odd that army logs should have been destroyed with such apparent despatch but that was the evidence.

[46] In any event a comparison between the contents of such logs as were made available and of the list of vehicles said to have been taken from viewing the edited video tapes discloses that on the one hand certain vehicles are recorded in the logs which are not recorded in the list taken from the tapes and on the other hand certain vehicles were on the list which were not visible on the video tapes or noted in the

logs. These discrepancies were detected by counsel for the next of kin and reviewed and agreed to exist by counsel for the other parties. They have not been explained.

[47] The practical significance of the discrepancies is twofold. Firstly, there is no explanation as to where the numbers that appeared on the list but not in the videos or the logs have been derived from. Does their presence on the list suggest a further and undisclosed source of information? Secondly, as the investigation team received only the list, any vehicles missing from it but present on the videos or logs would not have been made known to them. Whatever may be the explanation for the discrepancies they serve to confirm Mr McFarland's opinion that it would have been preferable for his team to have been directly provided with the source material in the form of the tapes and logs. Why that was not done has not been explained.

The Weapons and Explosives Research Centre ("WERC")

[48] This hearing gave rise to an examination of the existence and activities of an organisation apparently located within the Northern Ireland Forensic Science ("NIFSL") facility but operating there under the separate direction and control of SB. Its purpose was to gather intelligence from the technical examination of weapons, ammunition and related material. It is not clear why this work, which was directed to the connection of firearms and ammunition to known crimes and, if possible, criminals, could and should not have been carried out by the experienced, qualified and independent staff of NIFSL. Instead it appears to have been staffed by persons employed as examiners who were not so qualified and experienced and plainly were not independent. These factors probably led or at least contributed to a serious misattribution of the weapon and ammunition recovered in this case and led to that false intelligence being mistakenly provided to SB.

[49] The relationship between WERC and NIFSL was formally defined in RUC Force Order 1/91 and may be summarised as follows:

"(1) When ballistic exhibits were left by scenes of crime officers at NIFSL for examination there they were to be 'made available to WERC for examination with a minimum of delay'.

(2) The results of WERC examinations were not to be used as evidence in any proceedings and if evidence for proceedings was required a member of NIFSL should carry out his own examination and present any evidence required."

[50] In the present case the nine empty bullet cases from the scene were promptly delivered to NIFSL with a request that they be examined for fingerprints and ballistics. Plainly the fingerprint examination would require to be done first in case any prints were disrupted by the subsequent ballistics examination but there is no

evidence that fingerprinting was done at all. Instead the discharged cases seem to have gone directly to WERC who reported to SB within a few hours that the cases had been discharged from a weapon with no known history. After the subsequent finding of the weapon used to kill the deceased there is no evidence that that conclusion was reconsidered and certainly no change to that opinion issued. It was in fact entirely wrong and subsequent work by experts has established that the weapon had previously been used in eleven previous murders and two attempted murders prior to the death of the deceased on various dates between 1988 and the present killing, following which it was, as has been said above, hidden but found in the follow-up police search.

[51] Whether a correct attribution would have aided the investigation into the death of the deceased by linking it to the prior shootings in a timely fashion it is not possible to say. Similarly, whether useful fingerprints might have been found present on the spent cases had that examination taken place cannot now be determined. However it may safely be said that these errors cannot have assisted the investigation into the death of the deceased.

[52] What is the explanation for the misattribution? Several factors were put forward including the pressure of work at that time, the availability at that time of less effective microscopes and the difficulty of comparing the marks made on the ammunition, which was of Chinese lacquered steel rather than the more normal brass, with the characteristics of the weapon. However it was pointed out that a feature of the weapon used in the present case was that it produced a distinctive firing pin mark on the softer metal in the base of the bullet cases. It appears that this significant feature was not adverted to by those carrying out the examinations at WERC. As a result not only did WERC erroneously declare that the weapon used in the present case had no prior history but also erroneously attributed those prior shootings to another rifle recovered in 1993.

[53] There can be no sinister reason for the misattribution of the weapons as it was plainly unhelpful to SB to be supplied by its employees with what was false and misleading intelligence. I conclude that the principal reason for the errors was the lack of qualification, knowledge and experience on the part of those in WERC. I have said that I do not understand why their examinations could not have been carried out by the properly qualified and highly experienced ballistic staff at NIFSL. If for some reason it was not practicable or expedient for the work to be done directly under the NIFSL umbrella, professional staff with appropriate qualifications and experience could have been recruited from Great Britain, Europe, the United States or elsewhere to carry out this highly skilled and most important work. Instead the evidence was that the person placed by SB in charge of WERC at the date of this death had no qualifications whatever in forensic work in general or ballistics in particular. He had been a soldier and then a crane driver before working as an assistant firearms examiner in the then Department of Industrial and Forensic Science for four years between 1974 and 1978. Whatever he knew he had effectively picked up "on the job".

The non-availability of Police Officers' notebooks and journals

[54] It has already been noted that the intervening deaths of Chief Superintendents Murray and McBurney created problems in reliably ascertaining and assessing their knowledge and actions in the aftermath of the shooting. Those difficulties were not alleviated by the fact that the journals (a larger form of notebook for non-evidential matters kept by some officers) of the two officers could not be traced. The same is true of the journal of a retired SB officer who did give evidence. He explained that at the time when he retired there was no system for handing in journals which were therefore routinely retained by those who had been keeping them. He had later destroyed his own journal for security reasons but agreed that it would have helped him to give evidence at the inquest to have had it available to him.

[55] The requirement to hand in notebooks on the retirement of officers to whom they were issued upon the completion of the notebooks has been the subject of "Issue and Accounting Procedures" contained in Force Orders of 1998 and 2007 which were produced to the inquest. Whether there were any prescribed procedures in place before the earlier of these dates is not known although interestingly paragraph 1(2) of the 2007 document says:

"Records held within the Police Service of Northern Ireland are governed by different legislative requirements. In particular The Public Records Act (NI) 1923 which clearly states that all records are the property of the Chief Constable. This includes police officers and police staff notebooks and journals which are partially or entirely filled in."

[56] If between May 1994 and the 1998 Force Order notebooks and journals were indeed meant to be handed in and retained then such policy seems to have been honoured more in the breach than the observance. Had the journals of the two Detective Chief Superintendents been available for inspection they might have provided the inquest with helpful material but it cannot be positively said that they would. We do not know the nature of the material that either officer was accustomed to record or in what level of detail. Putting the matter as neutrally as possible it may be said that their absence was unhelpful.

The apparent destruction of Interview Notes relating to three suspects

[57] Three suspects were interviewed at Gough Barracks by police investigating this killing. No admission seems to have been made and no charges followed. The men were Billy Wright and two others. The interview notes have not been produced because, it is said, they were probably removed from Gough Barracks together with a significant amount of other police material by asbestos removal contractors who were working there and, it is surmised, destroyed by them. However, no record was

apparently kept of the documents removed, which were allegedly “contaminated” nor of their destruction.

[58] If the interview notes (and presumably the interviewers’ file or files) were in fact lost in this way it does seem very surprising. It is not uncommon in criminal trials to be told that exhibits are to be kept in their sealed bags because they are contaminated in some way and therefore constitute a health hazard. One wonders why officers or SOCOs wearing protective clothing would not have been engaged to place material such as this in sealed bags for retention? Alternatively, could conservation work and sealing not have been undertaken by the asbestos specialists working under police supervision? To allow a free hand to workmen to carry off sensitive confidential documents without recording the material or, if it had to be destroyed, closely supervising that destruction seems casual in the extreme. Whatever the explanation, its non-availability to the inquest was unhelpful.

[59] The agreed question posed in relation to this aspect is “was the police investigation into the death (and consequently any enquiry into the circumstances in which the death occurred) hindered by the manner in which evidence was managed subsequent to the death?” I regret that I am unable to say. Undoubtedly it may be thought that the various acts and omissions discussed in this section cannot have assisted the investigation but, as Mr McFarland put it, when pressed to agree that his investigation was thereby critically undermined “I don’t know the answer to that” and, taking account of all the evidence in my possession, my position can be no different. I simply do not know what the practical effect of all or any of these matters may have been. Certainly, taken cumulatively, they do not inspire any feeling of confidence in the way in which the police investigation was conducted or the materials gathered in the course of it preserved so as to be available to the inquest or, perhaps, to some further investigative or prosecutorial endeavour in the future. But whether the investigation into the death and the circumstances in which the death occurred was in fact undermined regrettably cannot be known.

Is there any other factor that the Coroner would wish to record as having in some (more than minimal) way caused or contributed to the death of Ms Mallon?

[60] This is the last of the agreed questions for my consideration. In their well-focused and moderately-expressed written closing submissions on behalf of the next of kin, counsel realistically accept that there is no evidence before the inquest on which I could base a finding of direct or indirect State involvement in the killing and I entirely agree with that submission.

[61] I have however also been asked by them to go further and consider whether there may have been collusion between members of the security forces and the perpetrators of the killing notwithstanding that documentary or other evidence is not available to establish its existence. It is rightly pointed out that collusion can be masked by apparent ineptitude or acts/omissions for which no explanation is forthcoming. I have been asked to scrutinise those acts and omissions (earlier

described in detail) which are unusual and contrary to good practice and/or common sense and to criticise them where appropriate.

[62] I have carefully followed that requested course but I do not as a result find direct or indirect evidence of such collusion or anything from which I could infer collusion from the evidence which has been brought before me.

Reginald Weir
Coroner
7 January 2019